FILED

JAN 27 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

THE LANCE AND LINDA NEIBAUER JOINT TRUST, an Oregon Trust, by and through Lance Neibauer, as Trustee,

Plaintiff-Appellee,

v.

MICHAEL J. KURGAN, an individual,

Defendant-Appellant.

No. 16-35201

D.C. No. 6:14-cv-01192-MC
District of Oregon,
Eugene

ORDER

Before: Peter L. Shaw, Appellate Commissioner.

Appellee's motion to dismiss this appeal for lack of jurisdiction (Docket Entry No. 7) is granted in part. This appeal challenges the district court's February 12, 2016 post-judgment order granting appellee's motion to compel discovery and granting appellee's motion for fees and costs incurred in bringing the motion. The portion of the order granting post-judgment discovery is not appealable until the issuance of a contempt order for failure to comply. *See Richmark Corp. v. Timber Falling Consultants, Inc.*, 937 F.2d 1444, 1449 (9th Cir. 1991) (order granting post-judgment motion to compel discovery is not appealable until a contempt citation issues). The portion of the district court's order granting fees and costs is,

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however, appealable. *See Intel Corp. v. Terabyte Int'l, Inc.*, 6 F.3d 614, 617 (9th Cir. 1993) (award of attorney's fees becomes final when the amount is determined); *Burt v. Hennessey*, 929 F.2d 457, 458 (9th Cir. 1991) (post-judgment order granting or denying a motion for costs is final and appealable). Accordingly, the scope of this appeal is limited to a review of the portion of the district court's February 12, 2016 order granting fees and costs.

The opening brief filed on July 21, 2016 is stricken.

On or before February 28, 2017, appellant shall file a replacement opening brief limited to a discussion of the portion of the district court's order February 12, 2016 order granting fees and costs. The answering brief is due March 30, 2017; the optional reply brief is due within 14 days after service of the answering brief.